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No. 98-467

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In The

Supreme Court of the United States

October Term, 1998

In re WILLIAM H. VIEHWEG

On Petition for an Extraordinary Writ
to United States Court of Appeals for the Eighth Circuit

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR EXTRAORDINARY WRIT

WILLIAM H. VIEHWEG
Petitioner
114 West 2nd South St.
Mt. Olive, Il 62069
Phone: (217) 999-5061

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ARGUMENT

COMES NOW Petitioner, pursuant to Rule 15(6), and replies to the Respondent's brief in opposition.

Dismissal. Contrary to Respondent's argument, Supreme Court Rule 20(1) does not require precise statements. It does require a showing sufficient to satisfy certain requirements. Therefore, as no explicit language is required, when the entire petition is evaluated and given reasonable inference, it does meets the requirements.

Contrary to Respondent's argument, the Petition does show that adequate relief is not available from the court below. The Petition, in the last several paragraphs of its Statement of the Case, states that the Petitioner properly sought appropriate relief from the Eight Circuit Court of Appeals, by moving to disqualify the Respondent from

entering her appearance as counsel for herself, but was summarily denied. Petitioner even sought reconsideration, only to be summarily denied again. If the Respondent intends to argue that other relief is available, she should have specified what available relief the Petitioner failed to seek.

Contrary to Respondent's argument, the Petition does contain a copy of the order with respect to which the writ is sought. The Petition requests that this Court review the Eight Circuit Court's refusal to disqualify Respondent, a party in this case, from entering her attorney appearance as counsel for herself. The Eight Circuit's orders denying Petitioner's motion to disqualify Respondent are included in the Petition's Appendix on pages 2 and 3. The Respondent's copy of the trial Court's final judgment, as included in her brief's appendix, is irrelevant.

Court has duty. This Court has a duty to supervise and ensure the impartial administration of justice within its system. A claim of fraud, perpetuated by the court's own officers, cannot be summarily dismissed.

Conflict between State and Federal law. As argued by the Petitioner, and undenied by the Respondent, the Missouri Supreme Court has clearly ruled that self-representation can not and does not constitute the practice of law. Yet the federal courts, via the Eight Circuit Court of Appeals denial to disqualify Respondent from representing herself as Missouri-licensed legal counsel, have recognized self-representation as the practice of law. Are the federal courts overriding Missouri state law, re-interpreting it, or ignoring it? Is the practice of law, as licensed by the State of Missouri, to be defined by the State of Missouri, to be defined by the federal courts, or to be a mere waif in the wind?

Crossover line. The American justice system can be seen as a pyramid. At the apex is the court, or judge. At the corners of the base, equidistant from the court, and each other

are the parties. At slightly higher than midpoint up the appropriate sides, are the attorneys representing the parties. The attorneys are slightly closer to the court, because their first duty is to justice, and only then, to their client.

Respondent, a party, argues that she can climb the pyramid and stand as an attorney, no longer equidistant from the Petitioner, and closer to the court, without prejudicing the Petitioner by destroying the fundamental structure of American justice.

Violation of common wisdom. There is an old saying that he who represents himself has a fool for an attorney. Such a saying is based upon the common wisdom that self-representation deprives the party of objective thinking.

Does the legal profession regard self-representation as professional? Ethical? Does the federal legal system regard self-representation as objective?

If, according to the old saying, the respondent chooses to play the part of the fool, are her attorneys approving such foolery? Does the Missouri Bar Association approve such foolery? Does the State of Missouri approve such foolery? Does the federal court system approve such foolery? Does the United States Constitution approve such foolery? And what are the American people to think of the institutions that are perceived as approving such foolery?

Show me the law. Petitioner has effectively opened the door and turned on the light to a dark little injustice that has been kept hidden for a long time. Attorney's representing themselves are not engaged in the practice of law and have no standing to enter appearances as legal counsel for themselves in the federal courts. Such an entry of appearance constitutes intentional misrepresentation, or fraud, and its only true purpose can be to seek partiality from the court and to wrongfully prejudice the opposing party.

Like the fable of the emperor with no clothes, Petitioner, alone, has voiced the obvious, that Respondent has no legal standing to enter her attorney appearance. Her absence of

legal argument shows just how naked she is. Now she asks that this Court look the other way, and ignore the obvious. If, as the Respondent argues, the "law is clear" and in her favor, then why has she not provided this Court with any authorities so stating? Why are there no amicus curiae briefs from the Missouri Bar Association, or other bar associations, in her support? Why, like the fable of the naked emperor, are all of Respondent's supposed supporters so silent?

Silent prayer. Respondent has effectively entered a silent prayer, that this Court, effectively, look the other way. Consider the evidence. Respondent has now entered her appearance as legal counsel for herself before this Court.

Supreme Court Rule 34(1)(g) prohibits any names on the cover of briefs except the following: attorneys representing parties, or, parties appearing pro se. Rule 34(3) requires that the signature page at the end of the brief conform with rule 34(1)(g).

The cover of Respondent's brief in opposition contains both her legal counsel's name and law address and the Respondents name and law address. Is Respondent represented by counsel, or is she pro se? Or is she entering her appearance as legal counsel for herself? Who is counsel of record? Such a statement is required by Rule 34(1)(g), yet absent on Respondent's brief. Why, on the signature page, is Respondent's name printed above the term "Attorneys for Respondent"?

Perhaps Rule 34 is intended to be ignored. Perhaps, from now on, all parties, even those represented by counsel and working at fast food restaurants, can demand to have their names and work addresses also printed on the brief's cover. Or, can any non-attorney pro se refer to themselves as "counsel for"? Or, are non-attorney pro ses illegally practicing law by representing themselves in federal court without a law license.

Bad apple. Consider the following story. A mother goes to the supermarket to buy her child an apple. From a counter

in the produce department she selects what appears to be a delicious apple. At the check-out counter, the mother discovers that the apple she selected contains a worm. When the mother informs the cashier of the quality problem, the cashier is indifferent. When the mother informs the produce clerk, the clerk states that that is the standard quality of that particular apple. When the mother informs the produce manager, the produce manager states that that is the standard quality of all their produce. When the mother informs the store manager, the store manager states that that is the standard quality of all their products in the store.

Consider the following fact. At the trial court level, Respondent, acting as her own attorney, filed five motions to strike. All where denied as frivolous. Respondent, acting as her own attorney, also served upon the Petitioner ten other motions to strike. But the court, assuming they were also frivolous, refused to allow her to even file them. Where was the Respondent's objectivity? If she was acting as a member of the legal profession, where was her professionalism?

Consider the following fact. At the end of the trial court proceeding, Respondent, acting as her own attorney, filed her bill of costs seeking a total of $3900.66. The Petitioner filed an opposition citing numerous case law. The trial court, on October 15, 1998, granted costs for a total of $253.30. That's just seven percent of the Respondent's original request. Where was the Respondent's objectivity? If she was acting as a member of the legal profession, where was her professionalism?

Need the entire legal profession and justice system be contaminated just to protect the foolery of one attorney?

Agent of justice department. Respondent argues that she never acted as an agent of the justice department. If so, then what authority did she have to sign the subpoenas? Failure of a subpoena recepient to comply with a subpoena's order is considered contempt of court. How could Respondent issue a court order without being an agent of the court?

Service. Supreme Court Rule 29 requires that Respondent serve three copies of her brief in opposition upon the Petitioner and provide proof of service. Said proof of service must be separate from the brief per section (5) and must recite the facts of the service and be signed by a member of the bar of this Court per section (5)(b).

Respondent's Certificate of Service for her Brief in Opposition is in violation of Rule 29. First, it is not separate from the document. Second, it does not contain the facts of the service as no date is entered. Third, it is not signed. If the Court's copy does contain the dates and signature, then Respondent violated said rule by failing to serve the Petitioner with a true copy. A true copy of Respondent's certificate of service, as provided in all three of the Petitioner's copies, is in the appendix, page A-2.

Note, though the Petitioner acknowledges that mailed service was performed by the Respondent upon the Petitioner on October 13, 1998, Petitioner strongly objects to what appears to have been either the Respondent's intent to file her brief without proper proof of service, or her intent to serve inaccurate copies. Such matters are not trivial.

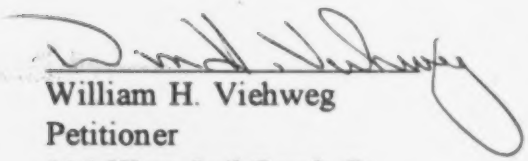
CONCLUSION

Respondent, a party in this action, has no legal standing to represent herself as legal counsel during the appeal process before the Eight Circuit Court of Appeals. Such a misrepresentation constitutes the illegal practice of law and violates, prima facie, the court's constitutional duty to remain impartial. Petitioner is being wrongfully prejudiced in the appellate court process.

This Court's duty to supervise, not only the administration of the United States Constitution, not only the administration of justice within the federal court system, but also the practice of attorneys appearing before the federal courts, requires that this issue be fully addressed.

The Respondent is illegally practicing law, and she has brought her fraud to the doorstep of this Honorable Court. Such practices must be stopped. Case law prohibiting such practices must be on the books to dissuade future lawyers and judges from overlooking the emperor nakedness. After all, the Petitioner is only a pro se. Without such case law to cite, he does not expect his voice to be heard, no matter how objective, professional, or correct, he may be.

Respectfully submitted,



William H. Viehweg
Petitioner
114 West 2nd South St.
Mt. Olive, IL 62069
Phone (217) 999-5061